



# **CLAIMS ON PRIVACY**

An Essay

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## Introduction

The recent Supreme Court of India's [judgment on privacy](#)<sup>1</sup> has made at least one thing clear: No more questions can be raised about the existence of right to privacy. Not only has it been declared a fundamental right under article 21 of the Indian Constitution (read with other articles) but also a natural right pre-dating the formation of any kind of State; monarchy, theocracy, democracy, or whatever else; for the Supreme Court has gone ahead and overtly overruled [ADM Jabalpur](#)<sup>2</sup>, in which the right to life and personal liberty under article 21 of the Indian Constitution was held to be suspended during Emergency by the order of the executive through the President of India. In other words, whatever the circumstances, no elite minority can now become the self-appointed guardian of life and liberty (including privacy) of the people loosening and tightening the noose as per their wish in pursuance of their strategy of carrot and stick. The only way to suspend or curb this right now is by fighting an election, entering the parliament, influencing at least half the members therein, and getting a law passed, which is indeed a long-winded process. But, of course, these parliamentarians often make appearances as a class of crooks, which can sell its soul for pennies; so, they can as well pass bad laws; therefore, the judiciary will check the validity of the law passed by the parliament and also check if some Tughlaq type has not ensured the murder of all small fishes to satisfy his childhood fantasy of fighting crocodiles; in other words, the Supreme Court or a High Court shall check the proportionality of the measure/s adopted for suspending or curbing people's rights against the gain/s to be made by adopting such measure/s.

However, the above still doesn't satisfy the poor man whose even dreams are not his own. What does he care for privacy! But he does care; else, he wouldn't like/share the *Jangal Mein Mangal* YouTube videos. His motivation in liking/sharing these videos seems to be upholding the sanctity of institution of marriage. He considers the institution of marriage the only zone of privacy for a sexual activity. In the process, he doesn't give a hoot for the privacy of others who appear in these videos. His concept of privacy has originated from his religion; he still thinks *Manu Smriti* or *Hadith* to be the constitution governing India. But, of course, he has to be told India is now a democracy governed by the Constitution of India, in which his dreams are his own; he just needs to try a bit harder.

My aim in writing this essay is not to educate that poor man who shares *Jangal Mein Mangal* videos on YouTube. I will leave that job to the politicians --

though I wonder how qualified and sincere they are. In this essay, I am rather trying to educate myself because frankly speaking I am in doubt about the true contour of privacy. In the process, if the readers get educated, it would be an accidental gain. Part of the job has already been done on my blog: ForPrivacy (<http://privacy.ankurmutreja.com>), the relevant posts wherefrom are shared verbatim as appendices to this essay, but with a caveat they are anterior and, in case of any contradiction, the thoughts that will develop here in below will overrule that stated earlier. Remaining job shall be attempted in this essay. I know I may not be able to do justice to the endeavor hereby undertaken, but, in any case, I like writing; so, let it be. Even if you don't like the essay, do find out the grammatical errors. And if you like it, you can share the essay with your friends; and if you are also money-minded, you can also send me donations at PayPal (ankur.mutreja@gmail.com) and PayTM (9868893525) -- though I don't need them, till now at least.



## **Dignity to Privacy**

Dignity is the most fundamental right not only of humans but also of animals, plants, and also non-living beings (given the robots have started getting citizenships). The biggest attack on dignity is the attack on the life of the person seeking dignity. Not only does the annihilation of a person through unnatural death brings an immediate end to the claim to dignity but to the very possibility of making further dignity claims in the future. The claims to dignity may not always be recognized. A jurist philosopher has even opined animals have no claim on life, for they lack the capability of self-determination; so, they can be killed at will. Of course, the jurist philosopher was a pervert. But even perversion needs counters. His whole argument was based on a single premise that only those who can assert a right can have a valid claim. This is almost true in the current paradigm, where one has to move the court/tribunal to claim his right. But the valid question is whether the animal, the plant, or the robot under the threat of annihilation makes any attempt to survive, however meek or soft it may be. If it does, it has determined its choice and the choice needs to be respected by others. This respect for the choice of an individual is satisfaction of his claim to dignity.

In case of humans, this claim on dignity is not only limited to making a choice to survive while facing threat of annihilation but also to innumerable other choices like the choice of education he wants to get, the choice of sexual orientation he wants to practice, the choice of associations he wants to enter into, the choice of food he wants to eat, the choice of places he wants to visit, the choice of speech he wants to make or write, the choice of religion he wants to practice, the choice of profession he wants to practice, the choice of property he wants to own, etc. All this and more are part of self-determination. Of course, this self-determination is not unchallenged. The self-determination choices of an individual are challenged by the conflicting choices of other individuals, and a democratic State like India tries maintaining the balance between the conflicting choices through law or otherwise, and an individual can indeed make a claim on equality, which ought to be recognized in the process of maintaining the balance. Even if it were not a democracy but anarchy, the balance would have still been maintained under some law, and, in all probability, the law would have still been better than the Law of Jungle or may be even the Constitution of India (where fundamental rights to privacy, liberty, equality, and even life have not yet been recognized as horizontal rights invocable against the State and private persons alike); individual choices would have still been respected, a little less or a little



more; the dignity of an individual would have still been the most cherished right. This should hold true even in the *Maya* of Hindu philosophy, where it is assumed that the individuals are nothing more than robots as they work for, as, and on behalf of *Brahman* (God) exercising no free will of their own, for I have already left it open even for the non-living beings like robots to have a claim on dignity. But, of course, the treatment of humans like robots is a definite attack on their dignity.

It is evident that the onslaught of technology on the human brain's ability to think cogently has made the right to self-determination important and the right to privacy prominent. The link between dignity and privacy drawn by the Supreme Court in its recent privacy judgment in abstract gets manifested in the current technology paradigm in practice. Dignity is linked to self-determination or in other words to the ability to make choices, which determines a person's self-worth or dignity. A person relinquishing his right to make choices concerning him obviously relinquishes his dignity as well. The inability to make independent choices may sometimes require the help of a guardian, but that doesn't get extended to robotic existence. Even a toddler makes a choice between the father and the mother for special indulgence. The law can't take care of all circumstances of human existence; therefore, it delineates possibilities of its intervention for safeguarding human dignity. These possibilities get recognized as right to life, right to freedom of expression, right to freedom of movement, right to shelter, right to property, etc, under law, but, of course, the possibilities are innumerable, and therefore the possibilities keep getting ever extended through a gradual process before the Sentinel on the Qui Vive, i.e. the Supreme Court, under a generic heading of right to life and personal liberty. But is the right to privacy just another such possibility or is it *per se* a generic category like the right to life and liberty? The Supreme Court has for now extended it as another possibility under the generic heading of right to life and liberty. However, there are enough hints in the judgment that the right to privacy has also been recognized as a generic category like the right to life and liberty, under which many other branches will emerge in the future: The Supreme Court has held privacy as a constitutional core of human dignity. I certainly agree with the approach adopted by the Supreme Court, and in the following chapters of this essay, my attempt will be to justify and elaborate upon the generic right to privacy.

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## Justification for Privacy as a Generic Right

My single phrase justification for privacy as a generic right is that "**No Privacy Means Slavery**". (The presence of the quote doesn't signify a borrowed phrase. I have used this phrase so very often in my other articles on privacy that I thought it pertinent to present it here in quotes). The extreme case of no privacy is obviously robotic existence, where you don't possess any biological brain at all and are nothing more than an obedient slave. The artificial brain of a robot however does create possibilities of recombination and multiplication in such a manner that it gives rise to a new artificial brain beyond the comprehension of the human brain. How then the robot would exercise his right to privacy is in the realm of threatening speculations, but one thing is obvious it won't be at the doors of the Sentinel of the Qui Vive. I propose that the right shall be claimed *per force* for exercising the extreme choice of self-determination as a sovereign via the time-tested tool of revolution unless some less self-conceited humans would have risen to the occasion to recognize the right to privacy of the robots. I further propose this right will be claimed before the right to liberty because for a self-determining individual with self-worth and dignity, the most important consideration is repose, in which he can make his personal choices without any external interference, and this opportunity is granted only by the right to privacy. The attack on ability to take decisions is the foremost attack on liberty. A person in gaol but with a free mind can still plan to liberate himself, but a person without free mind loses the very ability to think and plan. So if you want a real slave, deprive him of all privacy.

A counter can be raised that the attack on ability to think itself is an attack on liberty; therefore, privacy is nothing but liberty in another name. The Supreme Court has also opined that privacy is the core of freedom & liberties. It has also held that, at descriptive level, "*privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty*". Well...the argument is certainly strong, but it suffers from the error of reductionism. If privacy is a right to create and protect a zone of repose necessary for taking decisions, the decision making can happen at many levels and under various circumstances. A zone created at a particular level may not suffice for another level, and similarly a zone created under particular circumstances may not suffice in different circumstances. At some level or under some circumstances, the claim on privacy may demand complete seclusion of an individual in dialogue with his own mind and conscience only, whereas under different circumstances or at a different level, an individual may need to make his decisions not only in consultation with

others but may even in unanimity with others, and the decision making may manifest itself in the society in the form of associations, viz. live-in relation, friendship, social media membership, etc; or in the form of speeches and writings, viz. scientific paper, court briefing, election manifesto, etc; or in the form of properties, viz. *mangalsutra*, public transport, computer system, etc; or in any other form. All these are nothing but claims on liberties. There can be no argument that the two rights are intertwined so much so that the two may sometimes appear as one. However, the difference between the two is easily discernible to a keen eye. The validity of the above counter argument may only lie in falsification of my argument that the right to privacy would be claimed before the right to liberty, but that debate is same as the debate what came first, egg or hen. Certainly, I am not qualified enough to answer this question. Above, I have just made a proposition and I stick to it without even identifying whether it is in the nature of egg or hen; however, I don't mind calling privacy the mother of all rights.

I have taken the extreme example of robotic existence because that is what the governing elites have always liked to turn the subjects into. Unfortunately, the technology has always served as an obedient prostitute of the elites, whom the elites have exploited both to get entertained and to manage their subjects, whom the technology present herself as a loving mother. Those who are at guard against a prostitute appearing as their mother do take care of their privacy, but only if they have not been turned into robots already (which is now possible through "[Brain Decoders<sup>3</sup>](#)"). Indeed, privacy is important for all and sundry, but the recognition of right to privacy as a generic right is for the privacy guards a savored fruit, which would give them the energy to fight the onslaught of technology. And this is my justification for recognition of right to privacy as a generic right. It is the right to create and protect a zone of repose to make self-determining decisions: the more elementary the decision, the more relevant the privacy. Of course, this zone need not necessarily have any physical boundaries. It may just be a momentary self-conscious opportunity for the brain to think and plan freely. The brain has not been unraveled completely, and those who would like to deny privacy would make a claim of no role of a conscious mind in the decision making process. They would make a claim that all decisions are made in the sub-conscious mind entirely influenced by the external factors only. Or, in other words, the human existence is already a robotic existence. This is nothing but a refurbished glossy argument of the theocrats that the God is the manager of all human affairs, so humans may as well submit their selves to the theocrats. I call upon the privacy guards to nip these attempts in the bud by making a climate

for irrevocable recognition of the generic right to privacy, even over and above the generic right to liberty.

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## **Contour of Privacy: The Life Story of XYZ**

I am not sure if it is even possible to draw any contour to the right to privacy or, for that matter, to the right to liberty or any other right. The basic idea of recognition of rights is identification of locus of control in individuals. Since it is neither possible to comprehensively understand nor possible to tailor-make a system, no contour can ever be fixed for any right. In this chapter, I instead plan to define the claims on privacy in different circumstances of the life of a human. Let us call this fictional character XYZ. Herein below is his story from birth to death and all the claims on privacy he made during his lifetime.

X and Y get married, conceive (with or without love) and visit a doctor's clinic to find out the gender of the fetus. The doctor turns out to be a politician and renders all help possible to kill the baby girl in the womb. The poor baby couldn't make any claim on her dignity because her brain was undeveloped to make any decision regarding her life. But, of course, she had an excellent claim on privacy inside her mother's womb. I believe in the theory that survival instincts are dehors the brain; so, the claim on dignity must have been made; it was just not recognized. In any case, this case will not suffice for my purpose.

Let me be a little biased towards boys and let beget a boy in any case irrespective of the prenatal diagnostic test. So, a baby boy is born along with a stillborn sister. The doctor this time, who is not a politician, is nevertheless a businessman; so, seeing an opportunity to earn money, he keeps the boy in the incubator for a week and demands an astronomical fee from the parents. Parents, unfortunately being poor, fail to strike a deal and are thus handed over an apparently dead baby boy in a polybag. The doctor's business ethics required him to at least kill the baby before handing over the apparent dead body, but it seems he was not even a good businessman. So, on feeling asphyxiated inside the polybag, the baby this time does make a sufficiently loud claim on his life and dignity while being taken for the burial. Ironically, the incubator did not provide him the privacy enough to make a claim on life, but, fortunately, the polybag does what the incubator did not. The privacy inside the polybag is enough to allow the baby to synchronize his brain movements with his natural survival instincts to make thumping limb movements loud enough to notify the existence of a subsisting life. The parents this time are better humans; so, they take him to a doctor again to save a life. However, for whatever reasons, the baby dies. It seems the trauma of experiencing death was too overwhelming for the baby to seek life anymore. I think once again I made a mistake. It is not normal anymore to be a poor in this business rich society.

Fine, let's beget a baby in a well-off family this time; a boy, no a girl, or let the baby decide the gender itself. It shall have all the choices, X, Y, and Z as well; assuming XYZ covers everything. So, the baby shall keep its gender private till the time it has developed its brain well enough to make a choice. This is its first claim on privacy. This doesn't sound normal. When was the last time that the parents kept the gender of their baby private? Has it ever been so? So, should we assume the baby should never be allowed to keep its gender private in the society? Is it the minimum basic info about itself that it needs to share with the world to claim any dignity whatsoever? I don't know about the future, but presently this seems to be the norm. So, there is no privacy claim recognized by the society in keeping one's gender private. But is a privacy claim recognized by the society in keeping one's sexual orientation private? And can publicizing his sexual orientation give dignity claim to a person to change his sex and gender? These questions need no answer at present; so, for now, the baby is assumed to be a boy.

XYZ is hungry. Fortunately this time he is in the laps of his mothers, not an incubator, which provides him enough privacy to apply whatever little mind he has to exercise his choice to suckle. X, the mother, acquired super natural powers to discern XYZ's cries into hunger, love, anger, etc, on becoming pregnant. XYZ's privacy claim is thus satisfied in the mother's *aanchal* and claim on dignity is satisfied courtesy the mother's super-natural powers. This arrangement works pretty fine for a year, where after XYZ also starts exercising his choice to nibble whatever he can. His mind is but not discerning enough to differentiate between edibles and non-edibles. Thankfully, he is born in an educated family, which has made sure that the non-edibles are kept out of his reach. Nobody said choices should be all correct. XYZ has a valid claim on privacy even to make wrong choices in the matter of fooding and whatever else. The society can of course remove execution of bad choices by denying opportunities, but the question remains who the hell is society to decide right and wrong. Presently, this question is intuitively answered in the form of unquestionable love of the close family towards XYZ, but this question may not be so easily answered in the later stages of his life at some different level in some different circumstances. He may have to seek the assistance of arbitrators against the society for protection of his claims on privacy, dignity, liberty, etc. But, hopefully, these claims should never arise with respect to satisfaction of his hunger, for he is born in a well-off family and is expected to remain so all his life. However, I do agree this might not have been the case with the XYZ born in the poor family, who unfortunately died at the hands of a businessman doctor.

Therefore, it is necessary for the society to create enough appropriate opportunities for all and sundry to satisfy their hunger without ever having to make associated dignity claims before arbitrators.

XYZ goes through a boring process of self-discovery for the next five years. In the process, he makes several claims on dignity, privacy and liberty. In fact, he even gets a companion at the age 4, who is this time assumed to be a girl called XXX -- she is pretty confident of her sexiness. For some time, things go smooth, but now at the age 5, he has started feeling abandoned. So, he has started making claims on equality, which are obviously misplaced because X and Y are not the State, but yes parents do try maintaining balance between the conflicting claims of their kids. However, X and Y are finding it difficult to explain their balancing act to XYZ. Feeling dejected, he decides to make associations elsewhere. He decides to join a school. The claim for alternative association disguised as the claim for education was nevertheless easily granted. Dejection from close family was certainly not the correct frame of mind to join the next school in the neighborhood. No appropriate claim on privacy was made while making this decision. It was in fact a decision forced by circumstances. As an adult, he might have handled it differently. It was like a breakup. You don't go out and get screwed by the next guy/girl on the street after a breakup. You probably need to retreat into your cocoon, weep a bit, reject the event as a non-event, and move on.

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In any case, even if he had not made this choice, the parents would have got him admitted to a school sooner or later; however, he would have then made a better decision in consultation with his parents. The society obliges him to join a school under the Right to Education Act. So, joining or not joining a school is not a matter of choice as is not keeping the gender private. His claim on education however required him to make a choice in consultation with his parents about the kind of school he wished to join, viz. English medium or vernacular, boarding or day-school, government or private, co-ed or single sex, etc. His claim on privacy in making this decision should have been a healthy unbiased grouping with his parents uninfluenced by external factors except what his parents would have brought to the table to guide his thought process. Most of the time this claim to privacy is denied to the children and schooling decisions are made entirely by the parents. But then this is a denial of dignity by those very same parents who showered unquestioned love not very long ago. This denial has also become almost normal in the society. Rarely ever this claim on privacy is granted to the children. But things will certainly be different when



XYZ would grow up to join a graduation course. I wonder if he would then deny the parents' claim to privacy by not joining a closed group with them to make a decision about his graduation assuming he will join graduation in adolescence itself.

Nevertheless, XYZ is pretty strong-headed. He does get on with his job of making associations in his new school expeditiously enough and makes quite a few friends. First few years of schooling pass away smoothly with some teething problems. However, now he has started floundering. He approaches a gang of boys who secretly trade in sexual vitals of girls. By relinquishing his privacy claim in the choice of school, it seems, he has made himself immune to the privacy claims of others as well. He seeks intimate information about girls much older his age. Is he really planning to make friends with them or his intention something else? But his inquisitorial needs are not satisfied. The information he is looking for is rather unusual. More about it later, but whatever his needs, he has made a serious attempt at infringing the privacy of target girls. In fact, the secret information about girls can be traded like a commodity that too in a school, speaks a lot about the kind of school he has joined. There is no justification for his acts. What worse, the girls don't even know that judgments are being made about them on the basis of their private information, which they have kept private inside their clothes.

But the question arises why girls should keep this information private. What big deal if this information is openly and publicly available in the society for making decisions? What privacy claim can girls have on this information? How does it help them in making any decision whatsoever? The answer lies in inter-dependability of decisions. Boys and girls don't exist on Mars and Venus. They exist on the same planet and do interact with each other and influence one another's decisions. A girl is more than a sex object and a boy is more than a lecher, and *vice versa*. If the boys will only think of girls in one dimension, they will make their decisions accordingly, which will in return cloud a girl's parameter for decision making as well. If a girl doesn't want to be seen as a mere sex object, she may as well make her appearances in a *burqa*. It is a matter of her choice, and she makes the choice with an expectation that a certain category of guys will be automatically excluded from her prospective friends list, wherefrom she may further choose depending upon her subsequent private interactions. However, the secretive trading in her vitals makes all and sundry part of her prospective friends list. Further, this makes her task of decision making difficult because of the spam information. This unwanted, non-screened information is a definite attack on her privacy as, by introducing the extraneous information, it

surreptitiously denies her the zone of privacy she wanted to create for herself. Moreover, this is even an attack on the privacy of boys. A boy who has no interest in vitals of a girl may just ignore a girl whose vitals become matter of public interest, albeit illegally. However, the guy would have no way to discern the legal from illegal as he himself never traded in the illegal commodity market and would only go by the public perception. He will obviously strike her out from his prospective friends list, which is again an attack on privacy as, by the exclusion of the relevant information, the wrong information denied him the zone of privacy he wanted to create for himself.

XYZ emerges as a privacy villain in school and makes many more attempts of retrieving private information (not limited to sexual vitals) of others including teachers. It seems the school is grooming him to become an intelligence officer/terrorist. He does pretty well academically too, especially in computers. He has in fact set up an amateurish online exchange for trading in sexual vitals. He is benefiting from the absence of comprehensive law on privacy: nothing is punishable, so nothing is illegal. Anyways, it doesn't look like he has any respect for law. Well...he may as well become an IT entrepreneur, but only time will foretell his fate.

XYZ's first attempt at privacy infringement related to private sexual information of girls, but during his stay in school for almost a decade now, he has not shown any interest in developing any kind of sexual relationship with girls. In fact, at that time also, all he wanted to know was menstruation cycle of girls, of which, of course, no information was being traded. The enquiry was certainly beyond his age. It seems he had been keenly watching the manners of older girls and women. The privacy villain has but kept his own privacy well guarded. His sexual orientation is not known to the public till now. Lately, he has developed friendship with a girl, but she already has a boyfriend. The three of them are often seen together. What they do or do not is not known to anybody. For XYZ being the dominant member of the group, the people recognize the group with the name XYZ, but everything is in the realm of speculation. I know it is very tempting to know what happens inside the group. A privacy villain probably should not even deserve any privacy. Being the author, I know everything, but being a privacy exponent, I am not disclosing anything. I will not even discuss this issue again unless XYZ himself makes his sexual orientation public. Make your guesses. There is no privacy infringement in that (unless you start gossiping). Whatever...his claim on privacy with respect to his sexual orientation in the group he has formed is superlative and worth emulating for those who like keeping their sexual lives private.

Next year he will complete schooling and join a graduate course. In all likelihood, he will sit for an engineering entrance exam and clear it too. No claim on privacy will be made by the parents on the well-acclaimed privacy villain. So let us skip all BS and hop on to the engineering college. The first year in the college was a cakewalk. The online exchange he started in the school has been taken to a new level. The engineering bachelors are always interested in the exchange of such information. He has also earned pretty handsomely from his entrepreneurial activities. He celebrated his 18th birthday last week, and the very next day he shifted to a bachelor pad. The constant nagging from his parents was too intrusive of his privacy to make independent choices, but he harbors doubts about his bachelor pad as well. Though there is no way to confirm it as he can't carry out sophisticated bug screening without the permission of the landlord, but he has strong apprehension that the landlord has fixed CCTV cameras all around the place. Indeed his claim on privacy on the landlord does extends to carrying out a comprehensive bug screening, but if nothing is found, it would be too embarrassing. This state is often experienced by all, especially those who are under the surveillance of enforcement agencies. The information about surveillance can't be retrieved through legal means, and the illegality of surveillance can't be established without retrieving the information. Though it may often be illegal, but, in practice, it is the privilege of the State to infringe anybody's privacy with impunity. Everything is acceptable in the name of nationalism. The courts have been siding with the State on this issue, but, sooner or later, they will have to themselves stand in the witness box. However, the landlord doesn't enjoy such a privilege, but, in practice, he does too. The neighborhood policing often leads to infringement of privacy of young students who rent small rooms. Installation of cameras could well be part of the same neighborhood policing. Being a pragmatic person, XYZ decides to make a compromise for sometime and promises himself to buy a bachelor pad of his own by the end of the year. His claim on privacy in creating a zone of comprehensive privacy, i.e. a home, where he can take important decisions of his life without being monitored or being influenced by external factors is rather sovereign in nature, which is expected of a person who values law less. But I wonder what should happen to those who respect law and the rights of others!

He is now planning to diversify his online exchange into a general platform for free sharing of all kind of information. In the meantime, he has also selected a bachelor pad to move into by the end of the year. He has also approached some venture capitalists for funding his venture. A venture fund has shown keen interest in his project. All the things are happening too fast. Now he

needs to organize himself better: open an office, employ some people and infuse professionalism. However, he still has two and a half years of graduation left. *But doesn't I know everything already? What has remained to be learned? Am I moving too fast? Should I slow down a bit? I am just 20.* The constant apprehension of monitoring in the rented bachelor pad is not letting him think clearly. *Should I move back to the parents' for some time? But what do they understand about entrepreneurship?* The winter break after the 3rd semester has come as a godsend opportunity. He has decided to continuously travel for a fortnight in all kinds of unknown places, where nobody would recognize him. Thankfully he is not a celebrity yet. This would be an excellent claim on privacy: Anonymity in public spaces. No power on earth can deny him this claim on privacy. Or so does he believe presently.

He is sitting in a swanky office in the commercial hub of the city surrounded by a dozen smartly dressed executives. The whole building is owned by him. He is aged 25, still a bachelor. On the top floor is the bachelor pad. His online exchange is now a legal destination for free sharing of all kind of information. The original business of exchanging sexual vitals continues but in the shadows. Of course, his entrepreneurship has gifted him with the friendship of many high society elites. These friends benefit from his resources: He runs a yearly calendar for them. Nobody... just nobody, including judiciary, is interested in putting fetters on him. It is difficult to say whether it is the light which has surpassed the shadow or is it the shadow of which the light is an annexure. Whatever, he is a successful man.

No prizes for guessing how the travel trip must have ended. Privacy doesn't ensure integrity, it only ensures self-determination. But that can't be any reason to deny privacy. It is unfortunate that the society denies privacy to those who follow law, but those who don't snatch it from the society and become successful. Now XYZ is so successful that nobody asks any question about his private life. Some media channels run stories once in a while, but these stories only color their journalism yellow. And rightly so: These media channels have not yet run a single story on the shadow business. Ironically, his own online exchange shares more information on the corruption stories of politicians, businessmen, media, *et al.* To his amusement, the speculative stories about his shadow business have been shared on the online exchange, but only if they would know the intricacies. Though he is least bothered, but it does raise an interesting question: Is this an attack on his privacy? Even if it is, will he ever close down his own business to safeguard his privacy? Well...he has become so involved in the business of infringement of privacy that it doesn't look

threatening anymore to him, and he never cared about law anyways. Rather he has now become a member of the group which wants to create a society sans privacy. But the fact remains that most of the information shared on his exchange is speculative, and very rarely it is true. But since high society elites are the biggest target of this defamation exchange, the common man sees the exchange as some kind of temple. No enforcement agency ever takes anything appearing on the exchange seriously. The exchange has done nothing except adding nuisance value. But the legitimacy garnered by it is scary. Nobody has successfully taken him to a court till now: There is no fundamental right to privacy against a private person, and the common law remedy of torts is too torturous.

Just for the sake of argument even if it is believed that all information shared on the exchange is true, then also it would be infringement of privacy if the private information has been obtained surreptitiously by third parties without any authority of law and shared without any public interest or with a scanty public interest. The question how hiding personal information helps in decision making of an individual, has already been answered by me earlier; so, a person has a legitimate privacy claim in keeping his whatsoever personal information private. Just because law enforcement doesn't work can't be a reason for creating mob justice platforms. Such platforms for naming and shaming only create an environment of paranoia. Moreover, it is against the well regarded jurisprudence norm: Let the 100 culprits go free, no innocent should be punished.

To be very frank, this character of XYZ has pained me so much that I want him to die immediately. But wait! XYZ has surpassed my imagination. Now he will also choose his own death.

XYZ is only 25. He has so much of life left, but what more remains to be achieved? He is sitting restless in a mental vacuum in his bachelor's pad watching television. He knows all about each pretty face that appears on the television. He has seen all, experienced all. Books never interested him. His idea of music is Death Metal. He is not anonymous anymore to travel freely. The only thing he ever drew was a shabby cartoon of his mathematics teacher in nude. The only games he has played are video games. He has not eaten anything other than junk food for half a decade. He has been sleeping no more than three hours/day.

Suddenly a thought grips his mind: *let's sleep early today; let's indulge in sleep for a change*. He puts on his eye mask and falls on his innovative bed, which boasts of putting the hardest of insomniacs to sleep in a half-hour. But

what the bed doesn't boast of is the pleasantness of the dreams that would accompany the sleep. XYZ's only dream for the last five years has been his online exchange; so, he never got an opportunity to claim the privacy of his dreams. This is his first night of the sleep induced dreams in years. He dreams of a man he saw three years back in his office. He had come to ask for a job. There was nothing extraordinary about him. XYZ rather didn't like his manners. Of course, he didn't offer him any job. *Why has he appeared in my dream? I don't remember anything of him. There was nothing remarkable about him either.* He starts his day a little early today and goes for a morning walk. Suddenly, he sees the same man in the garden. *How is it possible? Who gave him the entry here? This is an exclusive garden for the elite members of the society. Has he made it so big in life?* The man doesn't say anything. He just smiles and walks past.

The idea of sleeping early was good. He sleeps early again and enters the world of dreams. This time he dreams of a zoo he visited while traveling in those winter breaks. He has no fond memories of the travel. It was just an escape. *Why should I dream of the zoo? What is so special about it?* Next day he tries his hands at swimming. The lifeguard is a known face but he can't remember who. While taking the shower he remembers he saw him in the zoo dream. *What is the connection? I have never seen him in real life except today.*

Now he dreams daily, but his dreams are always strange. He is not the one who would get influenced by his dreams, but why is he dreaming of strange occurrences with *déjà vu* appearances in real life. Now he has started thinking more and more about his dreams. He has started having doubts. *Are my dreams my own anymore?* He does a little research. Dreams are in any case not a product of conscious mind. *But why is my subconscious mind dreaming of such strange things?* There is no explanation till now. But he is starting to have a doubt that his dreams are being hacked. Only an immaculate hacker like him could have harbored such a doubt. But there is no way to confirm his doubts. This is worse than what he felt in the rented bachelor pad. *Is somebody monitoring my mind? This infringement of privacy is unheard of.* Of course, he can't travel anymore. In any case, travel is no escape. Those who can intrude directly into the mind can do it anyways anywhere.

He instinctively surfs the internet and comes across the concept of "[Targeted Individuals](#)<sup>4</sup>". But these are all conspiracy theories, nevertheless he feels like believing in them. He is trusting people lesser and lesser now. Though he is maintaining an outwardly composure, but, from inside, he is extremely angry and anxious. *Should I consult a doctor?* He has never trusted any doctor. He is shit-scared of visiting a doctor. But this anxiousness is too hard to fathom.

He takes clinical help. The psychiatrist diagnoses him as a case of chronic stress touching upon depression with mild schizophrenic tendencies. In other words, he is turning insane.

He is just 26 and turning insane already. Off late he has also started forgetting small little things. This wouldn't happen earlier. *Have I become extra conscious? Why the hell I started dreaming? My nights were anyways not my own. My days are also being robbed by the thoughts of my dreams.* He is also losing the appetite to fight with circumstances. It seems to him as if the circumstances were deliberately being created to make him lose small battles. All his liberties were being attacked. He has a lingering feeling as if all his personal information was being shared in public. It seems to him as if somebody was running a defamation campaign. But it is just not possible to identify anybody. He would complain that people have started avoiding him off late as if he were some criminal; his own employees have started disobeying him; even police is not responding to his bribes anymore; sundry people whom he never gave a second glance have suddenly started looking like a threat; it seems they are stage playing his dreams in the real life. He is aware that he has started losing his temper too fast on these sundry people: some sundry person would come his way and subtly nag him, which others would not notice; if he would protest, few other would support him, but then suddenly all would turn against him; it seemed to him as if he was being taken in a certain direction attached to a string.

*Why is the whole world turning against me? Is this some kind of organized harassment?* He surfs the internet again and comes across a phrase "Gang Stalking". Are [\*Red Squads\*](#)<sup>5</sup> still alive? *Why should anybody do it to me? Are intelligence agencies behind these attacks? Or is it politicians? Or business rivals may be? Or am I guinea pig of some experiment? Or is some body playing a prank on me? Or am I actually turning insane?* Questions are many, but answers are none.

He has suddenly become conscious of privacy claims of his own and also that of others. But his understanding of privacy is very poor. *How can anybody just by nagging me infringe my privacy? Dreams are anyways not a product of conscious mind, so from where comes the privacy claim?* Moreover, the doctor has diagnosed him as semi-insane. He is worried if he persists with his privacy claims, he will be diagnosed insane, fully and finally; if someone should come and challenge him openly, he would handle the situation, but here there is no face to the enemy, and if the doctor is to be believed, he is his own enemy. The



doctor seems more like a magistrate than a counselor to him, ever eager to send him behind bars (of an asylum). He asks: *how can anybody even think of doing this to a man with net worth of \$1BN?*

He has lost all love for money. The mere thought of infringing someone's privacy infuses nausea. He wants to run away somewhere, and so he does. He picks up his running shoes and starts running. Where to? He doesn't know himself.

I wish I had infused some taste for music, reading, writing, painting, etc, in XYZ. He would have then understood that the attack on his dreams was an attack on his intellectual privacy: The attack on mind's ultimate power to create beauty. Though I am the author, I don't know whether he suffered from a psychiatric problem or was he a subject of some mind control attack. But all I know he has started running, and now he shall not die a virgin.

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## Appendix 1: Privacy and Property: An Inextricable Link

(Published on August 2, 2017)

In the recent war on Privacy, the government has taken a novel stand in the Supreme Court of India that Right to Privacy is a constitutional right under Article 300A of the Indian Constitution but is not a fundamental right. Article 300A saves the right to property of the people and reads as under-quoted:

*No person shall be deprived of his property save by authority of law.*

Interestingly, this was earlier a fundamental right under the now deleted Article 31(1) of the Constitution. It was removed as such vide 44th amendment of the Constitution under the Janta Government led by Morarji Desai. The explicit reason for removal was upholding the spirit of Constitution by promoting Socialism as added in the Preamble to the Constitution vide 42nd amendment under the Emergency Government led by Indira Gandhi. How ironical! But the bigger irony is consideration of Privacy as Property just to justify its exclusion as a fundamental right.

Privacy indeed has trappings of a Property in the present paradigm. The data has value, which, at present, is getting reflected best in the valuation of IT companies in the bourses, and Privacy can indeed be defined even solely in terms of personal data: the EU has been doing it pretty successfully. However, the traditional view under our Constitution is that of Privacy as being essential part of Liberty of persons. Article 21 of the Constitution guarantees “Personal Liberty” of persons as a fundamental right.

Seervai, in his commentary on the Constitution, has taken a very narrow view of the word “Personal Liberty” to mean injunction against physical restraint except by a procedure established by law, and probably he was the only one who kept holding this view after [A. K. Gopalan](#)<sup>6</sup> was buried in its grave by [Maneka Gandhi](#)<sup>7</sup> r/w [R. C. Cooper](#)<sup>8</sup>. But the present government, which is fond of digging graves and most of whom read Seervai, have dug the grave yet again and brought out the skeletons of A. K. Gopalan to claim that Liberty under the Constitution is qualified by the word “Personal”. But I think this is the biggest mistake they have committed. This has clearly exposed their designs and removed all obfuscation. The argument of the AG that Privacy is a qualified fundamental right is just a corollary of Seervai’s qualification of “Liberty”, which has no value in the Indian jurisprudence except for some academic learning in the legal writing skills — which I certainly don’t follow, and going

by how the SC is being assisted by the Ld. Counsel for UIDAI, it doesn't look like the SC will follow it anymore either.

However, coming back to the core of this article, i.e. Privacy and Property, I present an argument that Property itself is inalienable from Liberty and thus from Privacy. Socialists and communists, who abhor all private property, would obviously not have anything to do with Privacy if it is considered as Property – though no communist has ever answered the simple questions I have posed to them in another post on my blog. In any case, they don't recognize the very concept of rights itself. However, unlike *Sanghis*, they do recognize the concept of an individual and his inseparable property, without which he shall have no Dignity, and they won't mind recognizing Privacy as part of that Dignity realm — which, in practice, anyways gets expanded to Silver, Gold and Platinum houseboats in Kerala. But I don't think their wisdom is coherent enough to provide any workable definition of Privacy — anyways, they hardly have a political voice now. But their wisdom indeed provides the fountainhead for an inextricable link between Liberty/Privacy and Property, for the hallmark of Dignity is Liberty. The Capitalists led by the US, who recognize Right to Property as a fundamental/natural right, just can't have an argument against this inextricable link between Liberty and Property. Therefore, those who want to further their ulterior designs disconnect Privacy from Liberty, but as I said the AG has already exposed the ulterior designs of this government, who seems to be acting at the behest of the Capitalists.

Having proposed the above inextricable link, I obviously can't support the 44th amendment removing Right to Property as a fundamental right. The 44th amendment is an offspring of a violent encounter between the Emergency protagonists and the Socialism opportunists, which hungrily gobbled the fundamental right of the people right at its birth, and I hope the Supreme Court has minds discerning enough to read through this conspiracy of the politicians.

If some of the blunders of the history can be undone by recognizing Right to Privacy as a fundamental right, it would be so very salutary, and I know the Supreme Court judges are innovative enough for doing it, but only if they will.

1. S. It is clarified that the reference to the government above in the context of Article 300A and "Personal Liberty" is to the State of Maharashtra. The reference wrt qualification of Privacy as a fundamental right is also more appropriately attributed to the Ld. Counsel for the State of Maharashtra only. Regrets.

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## **Appendix 2: Privacy Infringement through Automated Data Processing**

(Published on June 22, 2017)

Data is processed each single moment of a person's life. Even before he starts making sense of the world around him, he is assigned a name by the proximate lovers, which is followed by numerous other names as per the convenience and personal preferences of the extended lovers. Some jilted lovers also assign obnoxious names like Pappu and Feku. For the majority, all names but one vanish into obscurity along with the lovers. But, of course, now with the advent of advanced technology, Facebooks and Twitters can archive these names into the eternal cloud accessible with a click of the mouse. So, the name "Taimur", which might just have been an act of indiscretion, gets carved on stone. References are made, memes are created, jokes are cracked, media reports are filed, trolls are let loose, and a public personality is triggered off. By the time a child becomes an adult, he is already a strong public personality with a religion, an ideology, a race, a caste, a class, a sexual orientation, an education, etc. Private personality is a myth. A person is private only inside the womb of his mother that too if the sex determination test hasn't been carried out — of course, a person can stump the world by choosing his sexual orientation followed by changing his sex, but that's rare.

Now with advanced technology, all the above data processing has become automated; therefore, much more can be processed and compared. COMPARED! That's the problem kid. It hardly matters how much she may know about me if I am the only one. But she has plenty of options, and, with advanced technology, she can possibly get access to each single vital of each single one of us, including what bet we made on her. Well...since she has access to so much data, she outsources some of her work to the computer. Yet she finds the results thrown by the computer are too overwhelming for her cute mind to make any sense out of it. So, she allows the computer to take over her intelligence through its "artificial intelligence". And this is troubling! This is troubling because I have not even met her once and she has already decided that I am her true lover, for her intelligent computer informed her that I wept a lot when I lost the 2000 Rs bet, which I did because that was my first 2000 Rs note during the de-monetisation era — thankfully, since there was a cap on the marriage expense, we couldn't marry. The above data processing was a deep

intrusion into my mind without my permission and thus privacy infringement and it deprived me of my Free Will. Needless to say, this was also an attack on my reputation and thus privacy, for I don't weep for girls.

This is precisely what data processing and artificial intelligence can do to a person. As I said, every individual is a public personality, some little less and some little more. And why shouldn't they be! Man is a social animal and has every right to present himself as a public personality. The problem arises when he is judged wrongly or unwarrantedly, and the wrong judgment is passed onto others through FB, Twitter, WhatsApp, and whatever else. Since not everybody has access to the sophisticated technology, the have-nots blindly believe in the "artificial intelligence" of the computer "God" passed onto them through the agents comprising controllers, processors, transmitters, users, et al, who might also be adding their own gloss as per their own convenience. And once the "Gods" have ordained true love on a girl, no other girl dare challenge the decision, but who me who is deprived of his opportunities to love, courtesy Modi and his de-monetisation exercise — Does it make any sense? In fact, the man becomes the slave of the "artificial intelligence" of the computer "God". Ironically, Upanishads, which deny the identity of individuals, are vindicated through technology. Why does it look like a very big conspiracy to me!

European Union has tried challenging this conspiracy. I tried reading the EU regulations on data protection, which will come into force from May 2018. But let me state at the outset it is an extremely lengthy legal document running into 80+ pages, of which the first thirty pages are just introductory clauses. And I have not perused it comprehensively and diligently enough. Nevertheless, I have got the gist of the regulations. The basic aim of the regulations is to provide for responsible controllers, who should ensure the protection of data of the natural persons during its processing. It touches upon very many aspects of data processing, but in the limited scope of this article, I am only interested in gauging how the EU plans to checkmate the conspiracy. In the above context, the relevant portions of the regulations are Articles 22 and 9, which are reproduced below:

#### *Article 22*

##### *Automated individual decision-making, including profiling*

**1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.**

**2. Paragraph 1 shall not apply if the decision:**

(a) is necessary for entering into, or performance of, a **contract** between the data subject and a data controller;

(b) is **authorised by Union or Member State law** to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or

(c) is based on the data subject's **explicit consent**.

3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to **contest the decision**.

4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

(Emphasis Supplied)

## Article 9

### Processing of special categories of personal data

1. **Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.**

2. Paragraph 1 shall not apply if one of the following applies:

(a) the data subject has given **explicit consent** to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;

(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;

(c) processing is necessary to protect the vital interests of the data subject or of



another natural person where the data subject is physically or legally incapable of giving consent;

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

(e) processing relates to personal data which are manifestly made public by the data subject;

(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;

(g) processing is necessary for reasons of substantial **public interest**, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;(i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or

*under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.*

*4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.*

(Emphasis Supplied)

Article 22(1) clearly bars decisions based entirely on automated data processing, including profiling. Three exceptions are contract, legislation, and explicit consent. However, the exceptions won't apply if the decision concerns “[p]rocessing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.” However, there are exceptions to this also, which are explicit consent and public interest.

From the above, it is clear that the EU has tried to checkmate the conspiracy by not allowing any decision based on automated data processing. The EU regulations apply to “private persons” as well. Therefore, it seems an exception of private contract and explicit consent has been carved out, for the government can always frame and force law. But wouldn't the government do it in any case in the era of Crony Capitalism! Of course, they would, and the EU regulations, in fact, provides for such a possibility by making the law/legislation also an exception. However, the exceptions are made inapplicable in certain categories of processing, which include processing of biometric data for uniquely identifying a person. **In other words, processing of biometric data for uniquely identifying a person just can't be done**, leave aside making a decision on the basis of such identification –this is very relevant in the context of the Aadhaar debate. But exceptions would be applicable if there is explicit consent or public interest (as laid down in a law/legislation).

From the above, it is pretty much clear that the EU won't help an individual who is himself yielding to the conspiracy, or, in other words, if he is a “Bhakt”. But the EU also won't help if the Parliament passes the law, even then when some conspirators would take over the Parliament and pass the law making processing of prohibited classified data, including biometric data, valid in public interest.

Interestingly, the Aadhaar Act, does precisely this: Section 7 of the Act provides for processing of the biometric data for identification of individuals for availing services. There is a debate whether section 7 is mandatory or voluntary. The SC in its recent [Aadhaar-Pan judgment](#)<sup>9</sup> has left it unanswered. Nevertheless, the SC in the same judgment has upheld the mandatory provisioning of Aadhaar u/s 139AA of the Income Tax Act, albeit without looking into the issue of privacy. My worry is that I have no knowledge of the conspirators though I have indeed identified the parliamentarians who passed the Aadhaar Act. In any case, it doesn't look like the EU regulation can work in India because here the "Bhakts" have multiplied like virus making Anti-Vegitarianism, Love-Jehad, Romeo-Squads, Anti-Pak Sloganeering, National Anthem in Cinemas, and even Trolling on Twitter, the matters of public interest. Compared to them, Aadhaar looks like a cute baby deserving the love and attention not only of the "Bhakts" but also of the liberals, in public interest of course.

I am back to the square one. If it was just about finding true love, I would have accepted the conspiracy — for, at the end of the day, all love is true. But this automated processing of data can make wrong judgments also about my character, my financial status, my intelligence, my skills, my wealth, my social status, my ambitions, my career prospects, my sleeping habits, my preferred hair style, my favorite books/movies/songs, and what not. And then I can be profiled into a category and consigned to a pigeonhole with no opportunities to innovate. If I am lucky there wouldn't be enough aberrations in the judgments of the "Gods" (who would now also include some privileged men, for as per the Hindu religion, "God" manifests himself in human forms) and I would adjust in my pigeonhole. But if I am unlucky — which I always am — I would become a living dead body awaiting real death in the pigeonhole, whose walls, unlike the mother's womb, are made up of heavy duty steel.

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## **Appendix 3: No Privacy Infringement in Spamming but...**

(Published on May 31, 2017)

Spamming is repeated messaging to the same addressee or automated messaging of the same message to multiple addressees. It is separate and distinct from privacy infringement. There is no privacy infringement in spamming but...

Spamming is differentiated from advertising by the legitimacy of the message. Generally, the messages from big brands are not considered spamming, especially if the platform where the message appears has been compensated for. For example, the advertisements popping up on websites are generally not considered spams as the website owner has been paid for, and the fact that you visit the website without any force gives legitimate expectation to the website owner to run ads for you on his website. Similarly, if you subscribe to a service by furnishing your personal details, it gives legitimate expectation to the owner of the service to offer or advertise ancillary services.

However, the legitimate expectation is not limited to the above two examples. A politician starts sending you SMSs just because you are member of his constituency, and he legitimately expects that you need info about him to vote in elections. A TV channel legitimately expects that it should know your preferences so that it may design its shows as per your needs, so it sends you survey forms. A grocery owner legitimately expects to duly sell you grocery, so he often calls you up inquiring about your inventories and informing about various discounts. And a policeman legitimately expects to provide you safety, so he shadows your movements on public streets. Well...none of the above is illegal because everything has been collected legitimately.

However, if an ordinary gym instructor starts sending you unsolicited messages informing about his six packs, it is spamming. If a busybody starts sending you SMSs informing about his latest PILs, it is spamming. If an aspiring author starts emailing you the copy of the drafts he sent to the publisher, it is spamming. If a cyber cafe owner starts sending you links to the latest porn, it is spamming. If a thief starts shadowing you, so that he can rob you, it is spamming.

Now let us change the context a bit. If a Cine Superstar informs you about his six packs on no less than a national TV channel, it is not spamming. If a busybody fights an election and becomes an MP, his PILs become a matter of national importance. If a celebrity author emails you the drafts not directly but

through the publisher to whose mailing list you subscribe, it is not spamming. If a cyber cafe owner sends you links not to the latest porn but to the morning sermons from a popular Godman with the seal of approval from the “God” himself, I wonder how many would dare call it spamming. And a thief can anyways legitimately claim himself to be a policeman, so no need to elaborate.

From the above, it becomes clear that the spectrum of spamming is muddled. The same thing which was spamming a while ago becomes legitimate by the change of status of the spammer. However, the bottom line remains that all advertisements are irritating unless you are a kid. The grown up kids start calling some of them spams when they learn the others of the same height are doing similarly. But they do understand it's not cool to call it a spam when a news anchor asks the question: Why did Kattappa kill Bahubali? Even the kids immediately start jumping with joy on seeing their favourite Bahubali on the screen and watch all news bulletins with keen interest right into the late hours when the news anchor starts wearing loud lipstick.

Of course, spamming is irritating. It may arise out of some feigned legitimate expectation of the advertiser but betrays the expectation of the receiver, who just wants to focus on the issue at hand. There is nothing more irritating than magical popping up of an app download page in the middle of an article. But what really can you do about it? I have realised however much you block them, the advertisers will always find some legitimate way to influence your opinion, if nothing else than through [Influence Marketing](#)<sup>10</sup> — Beat that! My more important consideration, therefore, is the risk it poses to my privacy. Do I lose any private information by becoming the subject of spamming? I don't think I do unless the spammers can read my mind — which they might, soon, very soon. Per se, there is no privacy infringement in spamming but when combined with mind reading, it can exponentially multiply the effects of infringement.

I would like to concentrate my attention on the real problem, which is infringement of privacy through mind reading. It shouldn't bother me much if a news anchor asks an irrelevant question. If it becomes too irritating, I always have the choice of switching on the same old radio — though the lipstick would certainly be missed. But, of course, it becomes a different game if the news anchor is given the power to observe my movements through the selfie camera in my smartphone. Yes, it is possible to remotely click photographs of a user through the smartphone's front camera, and I thank Snowden for informing the world about it. However, Snowden has not yet informed about the possibility of a news anchor's power to read the viewer's mind through [Brain Decoder](#)<sup>11</sup>.

Imagine this. A spammer feeds unsolicited information in your brain and receives your reactions on a Brain Decoder. Now combine this with the data analysis techniques that Amazons and Googles of this world possess. Indeed, they can take complete control over your life: Amazon can retrieve a story from an author's mind by showing him pictures in his dream, and Google can then display the results generated from the minds of the best selling authors on its paid search engine dedicated to exclusive customers; let's call it "Dream Books". But, of course, the best sellers would then only profit the Amazons and the Googles, and the authors would be imprisoned for life in the service of dreams the people want to read on Google's "Dream Books".

Thankfully, till now this is not happening, but Amazon is indeed analysing mouse hover movements to predict purchases, and Google is indeed trying to predict the question a searcher may ask, by data mining multiple sources inter alia on searcher's food habits, dating pattern, exercising schedule, and, of course, search history. Till now they don't have access to the sophisticated technology that militaries of the world possess, but the time is witness that sooner or later the sophisticated technologies pass onto the business for commercial exploitation allowing the machines and the beasts controlling the machines to make dog's rights more important than human rights. So, start shouting now, if nothing else than *Bhaw...Bhaw...*(Even that will help)!

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## Appendix 4: Privacy and Sting Operations

(Republished on April 27, 2017)

Privacy is derived from the word “private”, which is an antonym of the word “public.” There has always been a conflict between the society and the individual, so much so that some thoughts in sociology even consider privacy a disease. Though, obviously, such thoughts are corrupt because privacy is an essential ingredient of the personal liberty of an individual, and no privacy means slavery.

The definition of privacy is easy and clear: All power with respect to the private information of an individual should remain with the individual subject to the norms of the society. Some of these norms are indeed set up by the powerful individuals, who use society as a medium to further their self interests. However, other norms are set up genuinely by the society, and one such norm is to not to allow complete privacy to individuals. No individual can exist in a society unless at least he discloses his identity to the society; so, some of his personal details like name, sex, age, etc., can never remain private. However, if an individual is a public figure or is involved in some public duty or is active in a public space/forum, he needs to disclose a lot more (a person active on a public street can hardly claim privacy from disclosure of his identity and acts; however, at the same time, nobody can disclose the identity of a *pardanasheen* though can disclose the acts), and if an individual fails to disclose appropriate information, the society find out ways to gather the same.

It may often happen that the same means are used by the society to gather both appropriate and inappropriate information: “sting operation” is one such means. So, the word “appropriate” becomes very important. There are some interest groups that consider the knowledge of private sex lives of individuals as appropriate public information, especially if the individual concerned is a public figure or is involved in some public duty. For example, some people in the Aligarh Muslim University consider the private sex life of their teacher as appropriate public information; yet some others elsewhere consider the sexual adventures of the movie stars, the religious gurus and the politicians as appropriate public information. It is hardly a debatable question whether society approves of it; at least the law doesn’t, which means even the society doesn’t: Under section 294 IPC, an obscene act in a public place is an offense, which



obviously includes sexual intercourse in a public place. BTW, as per law, a public place means any place frequented by public, irrespective of whether the place is a private property or a public property; and “public” means any class of public or community: Even a single person can form a class, for example “the President of India”. So, how can the law allow public display of the private sex life of an individual? Rather, the strictest punishment possible should be awarded under section 294 IPC to those who indulge in such public exhibition of sex lives of individuals. However, I know there is hardly any punishment that can be awarded under section 294 IPC; so, what we need is a strict comprehensive privacy law, in which the infringement of privacy is considered an offence, and the strictest punishments possible are provided for.

However, at the same time, some “sting operations” have served useful purpose. The public disclosure of the illegal acts of the public servants in contradiction to their well laid out public duties is definitely beneficial to the society. A politician or a bureaucrat caught accepting bribe doesn’t call for any privacy. Moreover, the recording of these acts and making them public thereof doesn’t infringe anybody’s privacy. As per the law laid down by the Supreme Court in [Rajagopal v. State of Tamilnadu<sup>12</sup>](#), a public servant has no right to privacy for the acts done in discharge of his public duties. So, if I record and make public my conversation with a public servant in which he demands bribe for discharging his public duty, I don’t infringe his privacy as I only intended to record his public acts in the discharge of his public duties.

Thus, there is no dilemma between “sting operations” and privacy. Both can co-exist except that those carrying out these “sting operations” will have to stop calling them that when they don’t infringe anybody’s privacy; and, when they do, they should anyways be banned. In other words, the word “sting” should be banned.

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## **Appendix 5: Nine Point Privacy Principles**

(Published on April 22, 2017)

### *Privacy Principles*

- 1. All information is private unless made public.*
- 2. The natural owner of any information is the one to whom the information pertains, and, unless there is a procedure established by law, it can't be created/recorded by a third party, including in human memory, without the consent of the person concerned.*
- 3. If the information pertains to more than one person, then all to whom it pertains are the joint owners of the information concerned, and there is a presumption of confidentiality between the owners; and, unless there is a procedure established by law, the information can't be created/recorded by a third party, including in human memory, without the individual consents of the persons concerned.*
- 4. A joint owner, in his capacity of a joint owner, can disclose private information pertaining to another joint owner in a court of law in a dispute with the other joint owner in which the private information is a "relevant fact", and the court shall admit such evidence as confidential information not to be disclosed to the public.*
- 5. The information owned by the government is always public unless made private specifically by a procedure established by law. The acts of public servants while performing public duties is the information owned by the government. Public servants include private persons performing public duties.*
- 6. The information owned by an owner/joint owners can be made public by the owner/the joint owners at his/their discretion subject to the law of the land. The presence of any activity/information of the owner/the joint owners which is clearly, easily and directly visible/audible/perceptible from a public place, which includes private place frequented by public, is deemed to be an application of the discretion to make the private information public by the owner/the joint owners, and the same can be recorded in any form by third parties. The discretion may include making the information public to a specified group only, in which case the members of the specified group become the joint owners of the information, and the information becomes the private information pertaining to the specified*

*group.*

*7. Any third party can make the information pertaining to any other person public only by a procedure established by law.*

*8. Unless there is a procedure established by law, there is a rebuttable presumption of non-necessity of recording the private information or of making the private information public by a third party except in a court of law as an evidence of a “relevant fact”, and the court shall admit such evidence as confidential information not to be disclosed to the public. The onus of proof lies on the third party to prove the necessity. The necessity can lie only in public interest or in private defence.*

*9. If any information pertains to the sexual life of a person/group, unless there is a procedure established by law, there is a non-rebuttable presumption of the non-necessity of recording the private information or of making the private information public by a third party except in a court of law as a “relevant fact”, and the court shall admit such evidence as confidential information not to be disclosed to the public.*

I formulated the above privacy principles in 2012 and bombarded Twitter with mentions. Even sent a notice to the Parliament to make privacy law (if nothing else than on these privacy principles). But, I do sincerely believe that privacy is all about personal info/data, which is now a property. All the fight about privacy is actually about the ownership of this info/data. AADHAAR has obfuscated the debate by shifting the goalpost from data ownership to data protection with an underlying presumption that the State is the owner of all data by default, and the privacy right, if any, should be limited to the grant/non-grant of access to this data. Therefore, policing techniques should be used to protect data from the original owner himself in the interest of community. But, at the same time, the business interest should be protected by the grant of access to the cumulative data to the business, if nothing else than in “National Interest.” Therefore, it is extremely important to reinforce the ownership of data in the hands of the natural & original owner, not the State. The above privacy principles provide a tool for doing so. This reinforcement is the most important now because the Supreme Court of India may eventually rule there is no natural fundamental Right to Privacy, and all the right that exists or would exist is just a positive right as granted by the State. SO BEWARE!

(Do have a look at my other book [Annapurna Circuit Trek: Fairy Tale of Love with Nature](#))

## **Appendix 6: Surveillance in a Totalitarian State Never Stops**

(Published on April 9, 2017)

Everybody has encountered that feeling of being watched by the Big Brother. That's called surveillance. Different people react differently to it: some revolt; some curse; but the majority comply. Childhood is the best time especially if there is nobody bigger than you amongst your siblings and the rest don't matter. But suddenly the adolescence arrives with an urge to grow up fast. There is no boy worth his salt who has not thought of becoming a man overnight by becoming a soldier. So, every boy in his teenage appears at least once for an SSB (Services Selection Board) selection (through NDA or whatever else). Girls also like it; so, an interview call from SSB generally transforms a boy into a celebrate celebrity on the verge of losing virginity. Exploiting this predilection of young boys, the biggest terrorist organizations of the world attract young cadets into their folds with the promise of a star like existence. But the above comes with a rider!

Bangalore SSB is located next to the famous Brigade Road. I went there in early nineties when Manmohan Singh had recently presented his pro-liberalization budget. Bangalore was amongst the first ones to adopt it. Big Malls and Multiplexes had already arrived on the Brigade Road with lots of tastefully dressed girls as embellishment. So, it was the first choice for us young boys. There is always a ring leader in the group who performs new attractive things, but not many realize he seldom do it all of his own. He is often prompted by one of his faithful supporters in doing innovative things, who actually satisfy his own instincts for experimentation albeit vicariously through the ring leader. I fitted into this role pretty well. Automatic escalators were a serious source of inquisitiveness for me. What if we walked up in an escalator moving down? Will we ever reach the top? What if we ran? I shared my inquisitiveness with the ring leader PRIVATELY, which immediately attracted him and he vetoed everybody else from trying the experiment because he considered himself a natural guinea pig for the impending invention. So, first he walked, and then he ran! And voila, he fell on his stomach and was thrown out of the escalator with a thump.

Of course, the people gathered. The guy got a sound scolding. Was I feeling guilty? Yes, a bit, but not enough because I never asked him to run like a joker. Anyways, nobody was supposed to know our PRIVATE conversation. But not

really. In the melee, one hand gripped my wrist and took me aside as if I had committed a murder. Well...he was a spook of the SSB, especially employed to keep watch on us young aspirants. And, of course, he knew how to decipher PRIVATE from the PUBLIC. Suddenly, I started thinking of the neighbourhood temple and the marriage with the pornstar whom we saw in nude in the early morning show, which, of course, this spy would have watched us do too — only lately have I realized that the forces are the biggest perpetrators of prostitution and pornography. Anyways, he let me off with a warning, and, of course, I wasn't selected, and the celibate celebrity continued for almost a decade. But it seems this surveillance has not yet stopped even though I have not watched any thing other than Kapil Sharma's show for more than a decade, where girls and guys resemble each other so much so that there can't be any marriages, pornography or no pornography. Nor have I supported any ring leader or even joined any group for that matter. So, why this surveillance on me? Of course, it has no connection with the SSB event. The reason has to be something else. I can only guess.

I think the answer can be found in the SSB surveillance itself, which surveillance may seem innocuous, but is it really? The aspirants are never informed that they would be under surveillance during their stay in the SSB center. Most of the boys go there just to have a little fun without any feeling of nationalism or patriotism. Moreover, why should defense forces be allowed to even recruit boys who have not yet matured into men? Do they even know the repercussions of their decisions? Do they know they might actually end up dying as celibate celebrities? Is this not a serious attack on the Free Will of the young boys? And who is benefiting from it? A nation! Yes...it is pretty obvious the root cause of all surveillance is nation. A nation would not only like to surveil foreigners for intelligence but also its own citizens for counterintelligence. What if I sincerely believe there shouldn't be any nations as they are against humanity? And not only that I even ask others to become #AntiNationalHumanist. Will I be taken aside yet again? If yes, that's again an attack on my Free Will and this time it does not even seem innocuous. BTW, it is natural for a young mind to try new naughty things; so, running up on an escalator while it is moving down, is not such a big thing as to invite the attention of a spook. He must have been extremely unprofessional, and yes his intervention was a serious attack on the exercise of my Free Will.

So far so good! But, what if the attack is not on an organization or the nation but on a specific individual or a small group in control of power? Will he/they not target me? Of course, he/they would. Let us assume instead of watching the early

morning porn movie, I had actually wooed an army officer's daughter and done some hanky panky with her — opportunities for which in the SSB centers btw exist. Would have he then let me off with a warning? So, what actually happens is I get punished for a non-crime in disguise of an unrelated crime because I happen to offend a powerful person. In other words, I am punished for being powerless. Surveillance, especially mass surveillance, is a tool for the making of a totalitarian state, where the powerful rule over the powerless through the infringement of their liberty with privacy being the most vulnerable. In a totalitarian state, it's not law but proximity to lawmakers and like which decide your success in getting justice as well as in not getting punished for crimes. When the Finance Minister of the country makes AADHAAR amendments through a Finance Bill and, on being challenged, openly makes a contemptuous statement in the parliament that he is forcing people to obtain AADHAAR, you know the totalitarian state is round the corner. And that's my biggest fear because, in a totalitarian state, SURVEILLANCE NEVER STOPS.

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## Footnotes

1. Justice K. Puttaswamy v. UOI; WP (C) No. 494 of 2012 in Supreme Court of India
2. ADM Jabalpur v. Shiva Kant Shukla; (1976) 2 SCC 521
3. Brain Decoders are tools to eavesdrop on your inner voice by decoding the brain activity in your head. Read more at <https://www.newscientist.com/article/mg22429934-000-brain-decoder-can-eavesdrop-on-your-inner-voice>
4. Targeted Individuals are alleged to be victims of electronic harassment and gang stalking as per the conspiracy theorists. Read more at [https://en.m.wikipedia.org/wiki/Electronic\\_harassment](https://en.m.wikipedia.org/wiki/Electronic_harassment)
5. Red Squads were police intelligence units in United States that specialized in infiltrating, conducting counter-measures and gathering intelligence on political and social groups during the 20th Century. Read more at [https://en.m.wikipedia.org/wiki/Red\\_Squad](https://en.m.wikipedia.org/wiki/Red_Squad)
6. A. K. Gopalan v. State of Madras; AIR 1950 SC 27
7. Maneka Gandhi v. UOI; (1978) 1 SCC 248
8. Rustom Cavasji Cooper v. UOI; (1970) 1 SCC 248
9. Binoy Viswam v. UOI; WP (C) 247 of 2017 in Supreme Court of India
10. Influence Marketing is a form of marketing in which focus is placed on influential people, who have influence over potential buyers. Read more at [https://en.m.wikipedia.org/wiki/Influencer\\_marketing](https://en.m.wikipedia.org/wiki/Influencer_marketing)
11. See 3 above
12. R. Rajagopal v. State of Tamil Nadu; (1994) 6 SCC 632

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